

CITY OF TIGARD, OREGON

RESOLUTION NO. 02- 39

A RESOLUTION A RESOLUTION AUTHORIZING THE ISSUANCE OF A LIMITED TAX IMPROVEMENT BOND FOR THE 69TH AVENUE LOCAL IMPROVEMENT DISTRICT.

WHEREAS, the City of Tigard is authorized pursuant to the Constitution and laws of the State of Oregon, including Oregon Revised Statutes Chapter 288 and Sections 223.205 to 223.295 and the City Charter, to construct publicly owned and operated local improvements which specially benefit properties, to assess the specially benefited properties for the costs of local improvements, and to issue limited tax bonds to finance the costs of those improvements; and,

WHEREAS, Article XI, Section 11b of the Oregon Constitution states that assessments for local improvements will not be “taxes” which are subject to that section’s limitations if the local improvement is a capital construction project undertaken by the City: (a) which provides a special benefit only to specific properties or rectifies a problem caused by specific properties; (b) the costs of which are assessed against those properties in a single assessment upon the completion of the project; (c) for which the payment of the assessment plus appropriate interest may be spread over a period of at least ten years; and, (d) for which the total of all assessments do not exceed the actual costs incurred by the City in designing, constructing and financing the project; and,

WHEREAS, the City has completed construction of the 69th Avenue Local Improvement District improvement project (the “Project”), and has assessed its costs against benefited properties in compliance with Article XI, Section 11b of the Oregon Constitution, so that the assessments for the District improvement project are not “taxes” which are subject to that section’s limitations; and,

WHEREAS, the City has issued its \$1,715,000 Amended Full Faith and Credit Local Improvement Bond Anticipation Note, which matures on July 2, 2002 (the “Outstanding Note”) to provide interim financing for the Project; and,

WHEREAS, the City now desires to obtain long term financing for the Project by issuing a limited tax improvement bond; and,

WHEREAS, Oregon Revised Statutes Section 223.235(2) limits the principal amount of limited tax improvement bonds to the unpaid balance of all contracts for installment payment of final assessments for the Project, plus the amount necessary to fund any reserves and pay financing costs; and,

WHEREAS, the unpaid balance of contracts for installment payment of final assessments for the Project is not expected to exceed \$1,307,969; and,

WHEREAS, U.S. Bank National Association has proposed to purchase the City's bond for the Project and the City Council finds that a negotiated sale of the bond to that bank is desirable; and,

WHEREAS, the City adopts this Resolution to establish the terms under which it will issue its Limited Tax Improvement Bond (69th Avenue Local Improvement District), Series 2002 to U.S. Bank National Association of Oregon pursuant to Oregon Revised Statutes Chapter 288 and Sections 223.205 to 223.295 to provide long term financing for costs of the District improvement project;

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

Section 1. Definitions.

Unless the context clearly requires otherwise, the following capitalized terms shall have the following meanings:

"Assessment Payments" means all amounts required to be paid to the City under all contracts for installment payment of final assessments for the Project, and the net proceeds of foreclosing any such assessments.

"Available General Funds" means all taxes and other legally available general funds of the City.

"Bank" means U.S. Bank National Association or its affiliates.

"Bond" means the City's Limited Tax Improvement Bond (69th Avenue Local Improvement District), Series 2002 which is authorized by this Resolution.

"Code" means the Internal Revenue Code of 1986, as amended.

"Debt Service Fund" means a fund or account, which the City accounts for separately, but which may be commingled with other funds or accounts for investment purposes, into which the City shall deposit all Assessment Payments.

"Director" means the City's Finance Director or the person designated by the Finance Director to act on behalf of the City under this Resolution.

"Event of Default" refers to any of the Events of Default listed in Section 7(A) of this Resolution.

"Project" means the local improvements for which assessments were imposed in the 69th Avenue Local Improvement District.

"Resolution" means this Resolution as it may be amended from time to time in accordance with Section 6.

Section 2. Bond Authorized; Delegation.

- A. The City is hereby authorized to issue the Bond to finance the Project. The principal amount of the Bond shall not exceed the amount which of applications to pay Project assessments in installments, plus estimated costs and reserves.
- B. Proceeds of the Bond shall be used to refund the Outstanding Note, to pay costs of issuing the Bond and to fund any required reserves.
- C. The Director may, on behalf of the City and without further action by the Council:
- (1) participate in the preparation of, authorize the distribution of, and deem final any disclosure documents which are required for the Bond;
 - (2) establish the final principal amounts, maturity schedules, interest rates, sale prices, redemption terms, payment terms and dates, and other terms of the Bond, enter into a bond purchase agreement with the Bank, and sell and deliver the Bond in accordance with that agreement and this Resolution; and,
 - (4) issue, sell and deliver the Bond, and execute any documents and take any other action in connection with the Project or the Bond which the Director finds is desirable to obtain long term financing for the Project and carry out this Resolution.
- D. The Bond shall be in substantially the form attached to this Resolution as Exhibit A, with such changes as may be approved by the Director. The Bond may be printed or typewritten. The Bond shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and Director.

Section 3. Security for Bond; Flow of Funds.

- (A) The Bond shall be payable primarily from the Assessment Payments. The City hereby pledges the Assessment Payments to pay the Bond. Pursuant to ORS 223.235(5)(c), the lien of the pledge shall be valid, binding and fully perfected from the date of issuance of the Bond. The Assessment Payments shall be immediately subject to the lien without the physical delivery thereof, the filing of any notice or any further act. The lien shall be valid, binding and fully perfected against all persons having claims of any kind against the City or the property assessed whether in tort, contract or otherwise, and irrespective of whether such persons have notice of the lien.
- (B) The City hereby pledges its full faith and credit to pay the Bond. The Bond is a limited tax improvement bond of the City, and the City shall pay the Bond from Available General Funds to the extent that Assessment Payments are not sufficient to pay the Bond.
- (C) The City shall deposit all Assessment Payments into the Debt Service Fund. So long as the Bond is outstanding, the City shall use amounts deposited in the Debt Service Fund only to pay Bond principal, interest and any redemption premium.

Section 4. Tax Covenants.

The City covenants not to take any action, or omit to take any action, if the taking or omission would cause interest on the Bond to become includable in gross income under the Code. The Director may, on behalf of the City, enter into additional covenants to protect the tax-exempt status of the Bond.

Section 5. Superior and Parity Obligations.

The City covenants not to issue any obligations other than the Bond which have a lien on the Assessment Payments, unless the City obtains the prior written consent of the Bank. The City reserves the right to commit its Available General Funds and taxing power for other purposes without restriction.

Section 6. Amendment of Resolution.

The City may amend this resolution only with the prior written consent of the Bank.

Section 7. Default and Remedies.

(A) The occurrence of one or more of the following shall constitute a Event of Default under this Resolution:

- (1) Failure by the City to pay Bond principal, interest or premium when due (whether at maturity, or upon redemption after a Bond has been properly called for redemption);
- (2) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed for the benefit of Bank, for a period of 60 days after written notice to the City by the Bank specifying such failure and requesting that it be remedied; provided however, that if the failure stated in the notice cannot be corrected within such 60 day period, it shall not constitute an Event of Default so long as corrective action is instituted by the City within the 30 day period and diligently pursued, and the default is corrected as promptly as practicable after the City receives the written notice described in this Section 7(A)(2); or,
- (3) The City is adjudged insolvent by a court of competent jurisdiction, admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy, or consents to the appointment of a receiver for the installment payments.

(B) The Bank may waive any Event of Default and its consequences.

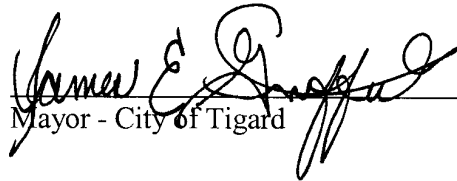
(C) Upon the occurrence and continuance of any Event of Default the Bank may take whatever action may appear necessary or desirable to enforce or to protect any of the rights of the Bank, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Resolution or in aid of the exercise of any power granted in this Resolution or for the enforcement of any other legal or equitable right vested in the Bank by this Resolution or by law. However, the Bond shall not be subject to acceleration.

(D) No remedy in this Resolution conferred upon or reserved to the Bank is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Resolution or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right

and power may be exercised from time to time and as often as may be deemed expedient. To entitle the Bank to exercise any remedy reserved to them, it shall not be necessary to give any notice other than such notice as may be required by this Resolution or by law.

This resolution is effective immediately upon passage.

PASSED: This 25th day of June 2002.



Mayor - City of Tigard

ATTEST:



~~City Recorder - City of Tigard~~

Greer A. Gaston, Deputy City Recorder

EXHIBIT A
(Form of Bond)

No. R-«BondNumber»

\$«PrincipalAmtNumber»

United States of America
State of Oregon
City of Tigard
Limited Tax Improvement Bond
(69th Avenue Local Improvement District)
Series 2002

The City of Tigard, Oregon (the "City"), for value received, acknowledges itself indebted and hereby promises to pay to the U.S. Bank National Association (the "Bank"), the principal amount of \$_____ in the following installments, together with interest at the rate of _____ Percent Per Annum:

[insert amortization table]

Interest is payable semiannually on the ___ day of _____ and _____ of each year, commencing _____, 2002, and shall be computed on the basis of a 360-day year of twelve 30-day months. Payment of each installment of principal or interest shall be made on each payment date to the Bank [insert payment procedure].

[insert redemption provisions]

This Bond is the City's Limited Tax Improvement Bond (69th Avenue Local Improvement District), Series 2002. This Bond is issued to finance a portion of the costs of the City's 69th Avenue Local Improvement District improvement project. This Bond is issued under and pursuant to Resolution No. ____ of the City adopted on June __, 2002 (the "Resolution") and in full and strict accordance and compliance with all of the provisions of the Constitution and Statutes of the State of Oregon and the Charter of the City.

This Bond is a valid and legally binding obligation of the City. The City has granted a first lien on and pledge of the Assessment Payments (as defined in the Resolution) to pay this Bond. The full faith and credit of the City are also pledged for the punctual payment of the principal of and interest on this Bond and the City has covenanted to pay this Bond from its Available General Funds to the extent that the Assessment Payments are not sufficient. This Bond does not constitute a debt or indebtedness of Washington County, the State of Oregon, or any political subdivision thereof other than the City.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, acts, and things required to exist, to happen, and to be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form, and manner as required by the Constitution and Statutes of the State of Oregon and the Charter of the City; and that the issue of which this Bond is a part, and all other obligations of the City, are within every debt limitation and other limit prescribed by such Constitution and Statutes and City Charter.

IN WITNESS WHEREOF, the Council of the City of Tigard, Oregon, by Resolution duly passed, has caused this Bond to be signed by its Mayor and countersigned by its Finance Director, all as of the date first above written.

City of Tigard, Oregon

Mayor

Finance Director